

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos.: 12-O-15392-LMA
)	13-N-10846 (Cons.)
ELIOT SCOTT GORSON,)	
)	DECISION AND ORDER OF
Member No. 99717,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

In this matter, respondent Eliot Scott Gorson is charged with six counts of misconduct stemming from two consolidated matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 1, 1981, and has been a member of the State Bar of California at all times since then.

Procedural Requirements Have Been Satisfied

On April 11, 2013, the State Bar properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. A return receipt was not received by the State Bar. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was filed with the court on April 15, 2013.

In addition, reasonable diligence was used to notify respondent of this proceeding. On April 11, 2013, the State Bar sent a copy of the NDC to respondent by regular, first-class mail to respondent's membership records address. The NDC was not returned to the State Bar. The senior trial counsel (STC) assigned to this case by the State Bar made several additional attempts to contact respondent without success. These efforts included sending an email to respondent at the email address listed on his official membership records,³ requesting that he contact the STC as soon as possible. The email provided the STC's direct phone number, address, and email address. Respondent did not respond to the STC's request. Thereafter, the STC: (1) contacted respondent's assigned probation deputy; (2) attempted to reach respondent at two email addresses for respondent that she received from his probation deputy; (3) tried to reach

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

respondent by telephone at his official membership records telephone number; (4) telephoned directory assistance for the area which includes respondent's official membership records address in an effort to obtain all telephone listings for respondent; and (5) conducted an on-line search for respondent.

Respondent failed to file a response to the NDC. On June 7, 2013, the State Bar properly filed and served on respondent at his membership records address, a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the STC declaring the additional steps, which had been taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on June 25, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On January 10, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on June 25, 2013; (2) there are no other investigations or disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has paid out three claims made against respondent and one more claim is pending. Respondent did

not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 6, 2014.

Respondent has a prior record of discipline.⁴ Pursuant to a Supreme Court order filed on October 31, 2012 (the October 31, 2012 disciplinary order), respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, including a one-year actual suspension. Respondent misconduct involved five client matters. He stipulated to willfully violating 17 counts of misconduct, which included violations of rule 3-110(A), rule 3-700(D)(2), rule 1-300(A), rule 3-700(D)(1), and rule 1-400(C) of the Rules of Professional Misconduct, as well as violations of Business and Professions Code section 6106.3, section 6068, subdivision (m), and section 6068, subdivision (i).

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-O-15392 (The *North* Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform any services of value on behalf of his client after having been retained to file and prosecute a bankruptcy matter.

Count Two – respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by intentionally (or through gross negligence) placing his client's electronic

⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

signature on a bankruptcy petition, which respondent filed with the court without the client's knowledge or authority; misstating facts (in the bankruptcy petition) regarding the client's employment, employment compensation, and the lenders on the client's home loan; and misrepresenting, by understating, in a statement filed with the bankruptcy petition the amount of fees he had been paid by the client.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by returning only \$1,500 of the total \$8,600 that the client had advanced to him, although respondent had not provided any services of value to the client.⁵

Count Four – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with the bankruptcy court's order requiring that he disgorge the fees that had been advanced to him by his client.

Count Five – respondent willfully violated section Business and Professions Code section 6068, subdivision (i) by failing to provide a response to the State Bar letter, requesting that respondent provide a written response to specific allegations of misconduct being investigated by the State Bar in the *North* matter.

Case Number 13-N-10846 – The Rule 9.20 Matter

Count Six – respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a timely and compliant rule 9.20(c) compliance declaration as ordered by the Supreme Court in its October 31, 2012 disciplinary order No. S204908.

⁵ Accordingly, the respondent failed to pay \$7,100 of the total \$8,600, which the client had advanced to him.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly filed and served the NDC on respondent by certified mail, return receipt requested, at his membership records address; sent a copy of the NDC to respondent by regular, first-class mail to his membership records address; contacted respondent's assigned probation deputy and directory assistance; attempted to reach respondent by telephone and email; and conducted an on-line search for respondent.
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Eliot Scott Gorson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Anthony North in the amount of \$7,100 plus 10 percent interest per year from November 28, 2011. Any

restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Eliot Scott Gorson, State Bar number 99717, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April __, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court